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SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 843-720-5270 | 463 KING STREET, SUITE B CHARLESTON, SC 29403-7204 | Facsimile 843-414-7039

November 15, 2019

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

RE: South Carolina Energy Freedom Act (H.3659) Proceeding to Establish Dominion Energy South Carolina, Incorporated's Standard Offer, Avoided Cost Methodologies, Form Contract Power Purchase Agreements, Commitment to Sell Forms, and Any Other Terms or Conditions Necessary (Includes Small Power Producers as Defined in 16 United States Code 796, as Amended) - S.C. Code Ann. Section 58-41-20(A)

Docket No. 2019-184-E

Dear Ms. Boyd:

Please find enclosed for filing in the above referenced docket, the *Response to Motion to Strike,* filed on behalf of the South Carolina Coastal Conservation League ("CCL") and the Southern Alliance for Clean Energy ("SACE").

Please contact me if you have any questions concerning this filing.

Sincerely,

s/ J. Blanding Holman, IV
J. Blanding Holman, IV
SC Bar No. 72260
Southern Environmental Law Center
463 King St., Suite B
Charleston, SC 29403
Telephone: (843) 720-5270
Fax: (843) 720-5240

Attorney for South Carolina Coastal Conservation League and Southern Alliance for Clean Energy

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CERTIFICATE OF SERVICE

I hereby certify that the parties listed below have been served via electronic mail with a copy of the *Response to Motion to Strike* filed on behalf of the South Carolina Coastal Conservation League and Southern Alliance for Clean Energy.

Andrew R. Hand, Counsel
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, SC 29202
ahand@willoughbyhoefer.com

Jeremy C. Hodges, Counsel
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street, 17th Floor
Columbia, SC 29201
jeremy.hodges@nelsonmullins.com

Becky Dover, Counsel
SC Department of Consumer Affairs
bdover@scconsumer.gov

K. Chad Burgess, Counsel
Dominion Energy Southeast Services, Incorporated
220 Operation Way - MC C222
Cayce, SC 29033
chad.burgess@scana.com

Belton T. Zeigler
Womble Bond Dickinson (US) LLP
1221 Main Street, Suite 1600
Columbia, SC 29201
belton.zeigler@wbd-us.com

Matthew W. Gissendanner, Counsel
Dominion Energy Southeast Services, Incorporated
220 Operation Way - MC C222
Cayce, SC 29033
matthew.gissendanner@scana.com

Benjamin L. Snowden, Counsel
Kilpatrick Townsend & Stockton, LLP
4208 Six Forks Road, Suite 1400
Raleigh, NC 27609
bsnowden@kilpatricktownsend.com

Mitchell Willoughby, Counsel
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, SC 29202
mwilloughby@willoughbyhoefer.com

Carri Grube Lybarker, Counsel
SC Department of Consumer Affairs
clybarker@scconsumer.gov

Nanette S. Edwards, Counsel
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201
nedwards@ors.sc.gov

Carrie Harris Grundmann, Counsel
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103
cgrundmann@spilmanlaw.com

Richard L. Whitt, Counsel
Whitt Law Firm, LLC
Post Office Box 362
Irmo, SC 29063
richard@rlwhitt.law

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Derrick Price Williamson, Counsel
Spilman Thomas & Battle, PLLC
1100 Bent Creek Blvd., Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com

Scott Elliott, Counsel
Elliott & Elliott, P.A.
1508 Lady Street
Columbia, SC 29201
selliott@elliottlaw.us

James Goldin, Counsel
Nelson Mullins Riley & Scarborough LLP
1320 Main Street 17th Floor
Columbia, SC 29210
jamey.goldin@nelsonmullins.com

Stephanie U. (Roberts) Eaton, Counsel
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103
seaton@spilmanlaw.com

Jeffrey M. Nelson, Counsel
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201
jnelson@ors.sc.gov

Weston Adams III, Counsel
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 11070
Columbia, SC 29211
weston.adams@nelsonmullins.com

Jenny R. Pittman, Counsel
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201
jpittman@ors.sc.gov

This 15th day of November, 2019.

s/ Lauren Fry
Lauren Fry

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STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2019-184-E

In the Matter of: South Carolina Energy Freedom Act (H.3659) Proceeding to Establish Dominion Energy South Carolina's Standard Offer, Avoided Cost Methodologies, Form Contract Power Purchase Agreements, Commitment to Sell Forms, and Any Other Terms or Conditions Necessary (Includes Small Power Producers as Defined in 16 United States Code 796, as Amended) - S.C. Code Ann. Section 58-41-20(A),	**SOUTHERN ALLIANCE FOR CLEAN ENERGY AND SOUTH CAROLINA COASTAL CONSERVATION LEAGUE'S RESPONSE TO DOMINION ENERGY SOUTH CAROLINA'S MOTION TO STRIKE**

Pursuant to S.C. Code Ann. Regs. 103-829(A), the Southern Alliance for Clean Energy ("SACE") and South Carolina Coastal Conservation League ("CCL") hereby respond to the motion filed by Dominion Energy South Carolina ("DESC" or "the Company") to strike the Independent Third Party Consultant Final Report Pursuant to South Carolina Act 62 (the "Report" or "Power Advisory Report") submitted by Power Advisory, LLC ("Power Advisory"). SACE and CCL respectfully request that the South Carolina Public Service Commission ("the Commission") deny DESC's baseless motion for the reasons discussed below.

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INTRODUCTION

The South Carolina Energy Freedom Act ("Act 62") authorizes the Commission to employ "third-party consultants and experts in carrying out its duties under this section, including, but not limited to, evaluating avoided cost rates, methodologies, terms, calculations, and conditions" proposed by utilities. S.C. Code Ann. § 58-41-20(I). Act 62 provides that the Commission "shall engage, for each utility, a qualified independent third party to submit a report that includes the third party's independently derived conclusions as to that third party's opinion of each utility's calculation of avoided cost." *Id.* Act 62 further provides that "[a]ny conclusions based on the evidence in the record and included in the report are intended to be used by the commission along with all other evidence submitted during the proceeding to inform its ultimate decision setting the avoided costs for each electrical utility." *Id.* Finally, Act 62 authorizes the independent third party to "include in the report a statement assessing the level of cooperation received from the utility during the development of the report and whether there were any material information requests that were not adequately fulfilled by the electrical utility." *Id.*

In its August 28, 2019 Order, the Commission engaged Power Advisory as its qualified third-party consultant in three avoided cost dockets: 2019-184-E, 2019-185-E, and 2019-186-E. On November 4, 2019, Power Advisory issued its Report evaluating the avoided cost rates, methodologies, terms, calculations, and conditions proposed by DESC in this docket. On November 8, 2019, DESC filed a Motion to Strike the entirety of the Report. Contemporaneously with the Motion to Strike, DESC filed its Comments in

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Response to the Power Advisory Report, and incorporated by reference all arguments made in its Comments into the Motion.[1]

ARGUMENT

A. DESC's Statutory Objections Are Meritless

DESC asserts that Power Advisory's Report is "far outside the scope of what [Act 62] envisions"[2] and therefore must be stricken from the record. DESC is incorrect: the Power Advisory Report falls squarely within the bounds of Act 62. Indeed, every one of the examples cited by DESC shows that Power Advisory executed its duties faithfully and properly under Act 62, and that its analysis and conclusions must, by statute, be *included* in the record.

First, DESC asserts that Power Advisory failed to comply with Act 62 because it did not "submit its own independent analysis showing an appropriate avoided cost calculation for each utility" and "[n]o calculation of an avoided cost for DESC's system was performed."[3] But Act 62 requires no such thing. Act 62 directs the Commission to engage a qualified independent third party expert "to submit a report that includes the third party's independently derived conclusions ***as to that third party's opinion of each utility's calculation of avoided costs***[.]" *Id.* (emphasis added). In other words, Act 62 requires Power Advisory to assess DESC's avoided cost calculations, not to calculate and propose its own avoided cost rate. DESC's assertions to the contrary are flatly inconsistent with plain statutory language and the South Carolina General Assembly's obvious intent.

[1] Dominion Energy South Carolina, Inc.'s Mot. to Strike Final Report of Power Advisory, LLC (hereinafter "DESC Mot. to Strike") at 2
[2] *Id.* at 2.
[3] *Id.* at 4.

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Second, DESC takes issue with Power Advisory's recommendation that the Commission initiate a study with an independent consultant to assess DESC's solar integration costs, as provided by Act 62. DESC argues:

> … absent from the Report is any independent study or analysis as mandated by S.C. Code Ann. § 58-41-20(I). The Report itself acknowledges this omission, recommending to the Commission with respect to a critical determination in this case that it should, "as provided for in Act 62, . . . initiate a study with an independent consultant to assess DESC's solar integration costs." Report at iii. Respectfully, DESC submits that this is in fact the task that Power Advisory was hired to perform.[4]

Here DESC is conflating two entirely distinct provisions of Act 62. Section 58-41-20(I) of the Act pertains to the duties of the independent third-party expert (i.e., Power Advisory) hired to evaluate the utilities' proposed avoided cost rates. Section 58-37-60 of the Act, by contrast, authorizes the Commission and the Office of Regulatory Staff to "initiate an independent study to evaluate the integration of renewable energy… into the electric grid." While the Power Advisory Report does indeed recommend that the Commission initiate an independent renewable integration study as provided by § 58-37-60, this does not show that Power Advisory was "hired to perform" that renewable integration study—it shows the opposite. Power Advisory was hired to provide its "opinion of each utility's calculation of avoided costs." S.C. Code Ann. § 58-41-20(I). That is exactly what it did, and the prospect of the Commission and the Office of Regulatory Staff authorizing "an independent study to evaluate the integration of renewable energy… into the electric grid" pursuant to Section 58-37-60 of the Act does nothing to invalidate Power Advisory's work.

[4] Dominion Energy South Carolina, Inc.'s Comments in Response to the Power Advisory, LLC Report at 3.

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Third, DESC critiques Power Advisory for "seeking to provide opinions on discovery disputes to which it was not a party" and takes issue with Power Advisory's conclusion that DESC had a "defective 'spirit' of cooperation in the proceeding."[5] But the EFA explicitly requires that Power Advisory "include in the report a statement ***assessing the level of cooperation received from the utility*** during the development of the report." S.C. Code Ann. § 58-41-20(I). The plain language of the EFA empowers, and in fact requires Power Advisory to express its opinion regarding the level of cooperation received from DESC.

B. The Power Advisory Report is Permissible Evidence and does not Violate DESC's Due Process Rights

DESC argues that the Power Advisory Report "does not constitute permissible expert testimony" and is therefore inadmissible.[6] DESC fundamentally misunderstands the role Power Advisory and the Report play in this proceeding. Act 62 provides that "[a]ny conclusions based on the evidence in the record and included in the report are intended to be used by the commission along with all other evidence submitted during the proceeding to inform its ultimate decision setting the avoided costs for each electrical utility." S.C. Code Ann. § 58-41-20(I). Act 62 explicitly provides that the Report's conclusions, based on evidence already in the record, may be relied upon by the Commission.[7]

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[5] DESC Mot. to Strike at 5.
[6] *Id.* at 4.
[7] DESC seems to believe that the independent consultant required by Act 62 must do more than render an appraisal of evidence, DESC Mot. to Strike at 3, yet do something less than produce its own evidence, *id.* at 4-5. DESC in essence wants the independent consultant to do nothing at all. Clear legislative intent dictates otherwise. *See State v. Sweat*, 379 S.C. 367, 377, 665 S.E.2d 645, 651 (Ct. App. 2008), aff'd as modified, 386 S.C. 339, 688 S.E.2d 569 (2010) ("When interpreting a statute, courts must presume the legislature did not intend to do a futile act. The legislature is presumed to intend that its statutes accomplish something." (citations omitted)); *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("[W]e must read the statute so 'that no word, clause, sentence, provision or part shall be

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DESC also argues that the Report constitutes a violation of the Company's Due Process Rights under State and federal law.[1] This argument fails because the Report's conclusions are "based on evidence already in the record" and the Company had an opportunity to respond to and conduct cross-examination on that evidence during the hearing, and DESC further had the opportunity to provide comments on the Report itself—which it in fact did. DESC's basic view seems to be that its position on every single issue is the *only* position possible, and that any disagreement on *any* of those issues amounts to a constitutional affront. On this DESC is wrong, just as it is wrong on multiple other issues in this case.

CONCLUSION

Based on the foregoing, SACE and CCL respectfully request that the Commission deny DESC's Motion to Strike the Independent Third Party Consultant Final Report Pursuant to South Carolina Act 62.

Sincerely,

s/ J. Blanding Holman, IV
J. Blanding Holman, IV
SC Bar No. 72260
Southern Environmental Law Center
463 King St., Suite B
Charleston, SC 29403
Telephone: (843) 720-5270
Fax: (843) 720-5240

rendered surplusage, or superfluous,' for '[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law.'" (citations omitted)).